IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13-7-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.2464, 2529 of 1998, 9861, 9879 of 1999

W.P.No.2464 of 1998

K.Ramachandran ... Petitioner

Vs.

1. Managing Director
Tamil Nadu Government Transport Corporation
(Villupuram Division-II)
Vellore.

2. Managing Director
Tamil Nadu Government Transport Corporation,
(Villupuram Division-III)
Kancheepuram.

3. K.Thiagarajan ... Respondents

Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of mandamus directing the first respondent to fix the basic pay of the petitioner on par with the basic pay of the third respondent as on 23.11.1991 so as to remove the pay anomaly of senior drawing less pay than junior.

W.P.No.2529 of 1998

J. Lawrence ... Petitioner

Vs.

1. Managing Director
Tamil Nadu Government Transport Corporation
(Villupuram Division-II), Vellore.
2. Managing Director
Tamil Nadu Government Transport Corporation,
(Villupuram Division-III)
Kancheepuram.

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3. K.Thiagarajan ... Respondents

Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of mandamus directing the first respondent to fix the petitioner's pay at least on par with that of the third respondent's pay of Rs.1610/- as on 23.11.1991 so as to remove the pay anomaly of senior drawing less pay than the junior.

W.P.No.9861 of 1999

N. Dharanendran ... Petitioner

Vs.

1. Managing Director
Tamil Nadu State Transport Corporation
Vellore.

2. Managing Director
Tamil Nadu State Tansport Corporation,
Kancheepuram.

3. K.Thiagarajan ... Respondents

Writ petition filed under Article 226 of Constitution of India, praying the Court to issue a writ of mandamus directing the first and second respondents to rectify the pay anomaly in respect of the petitioner as on 23.11.1991 compared with the pay of the third respondent and to pay the petitioner difference in pay and allowances for the period from 23.11.1991 to 30.6.1997 with other monetary benefits that may arise.

W.P.No.9879 of 1999

K.M.Duraiswamy ... Petitioner

Vs.

1. Managing Director
Tamil Nadu State Transport Corporation
Vellore.

2. Managing Director
Tamil Nadu State Transport Corporation,
Kancheepuram.

3. K.Thiagarajan ... Respondents

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Writ petition filed under Article 226 of Constitution of India, praying the Court to issue a writ of mandamus directing the first respondent to fix the petitioner's pay at Rs.1610/- in par with the pay of the third respondent effective from 23.11.1991 and both first and second respondent Corporations to take further steps to pay difference in pay and allowances for the period from 23.11.1991 to 30.6.1997 the date of retirement, including other monetary benefits that may arise at the time of superannuation.

For Petitioners : Mr.C.Manohar

For 1st Respondent : Mr.V.R.Kamalanathan

For 2nd Respondent : Mr.T.Chandrasekaran

For 3rd Respondent : Mr.R.P.Kabilan

COMMON ORDER

Petitioners in all the writ petitions seek direction to the first respondent to fix their basic pay on par with the basic pay of the third respondent as on 23.11.1991, so as to remove the pay anomaly of senior drawing less pay than the junior.

2. The facts necessary for disposal of these writ petitions are identical, which are as follows.

(a) Petitioners were appointed as Drivers in the erstwhile Tamil Nadu State Transport Department on 19.9.1963, 11.7.1964, 26.8.1964 and 1.7.1964 respectively and after formation of new Transport Corporation on and from 1.1.1972, petitioners were absorbed in the then Pallavan Transport Corporation and after bifurcation, in Pattukottai Azhagiri Transport Corporation. The petitioners were promoted to the post of Driving Instructor by order dated 7.6.1984, 14.8.1984, 7.8.1984 and 7.8.1984 respectively.

(b) The third respondent was also appointed originally as driver in the Tamil Nadu State Transport Department, but subsequent to the petitioners' appointment. He was also absorbed in the newly formed Transport Corporations exactly in a similar manner and he was promoted as Driving Instructor on 23.11.1991, that is, long after petitioners' promotion as Driving Instructor. Therefore, Petitioners are senior to the third respondent

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both in the lower post of Drivers and also in the promotion post of Driving Instructors and the same is not in dispute.

(c) According to the petitioners, as they having been promoted to the higher post much earlier to the third respondent, they are entitled to get salary of the promoted post from the date of their promotion to the post of Driving Instructor, that is from 7.6.1984, 14.8.1984, 7.8.1984 and 7.8.1984 respectively. But the petitioners are paid lesser salary than the third respondent even though they were promoted earlier to the third respondent as stated supra. The said fact came to the knowledge of the petitioners after the grant of pay revision by the Puratchi Thalaivar M.G.R. Transport Corporation by order dated 2.4.1996, in which the pay for the four juniors were stepped up with that of the third respondent on and from 23.11.1991, the date of promotion of the third respondent.

(d) Petitioners state that all the Transport Corporation employees in the State of Tamil Nadu are eligible to get their pay structure revised once in three years and accordingly on 1.9.1983, 1.9.1986, 1.9.1989, 1.9.1992 and on 1.9.1995, settlement under Section 12(3) of the Industrial Disputes Act were arrived at between the Union of Employees and the Management. In all these agreements, there was a specific provision for protection of pay to the senior in the event of juniors happen to draw more pay. The relevant portion in the agreement relating to settlement on 1.9.1989 reads as follows,

> "... In the event of a junior employee being fixed at a higher stage of scale than a senior, the pay of the latter shall be fixed at the stage allowed to the former."

Petitioners therefore submit that they are entitled to get their pay refixed on par with that of the third respondent, at least from 23.11.1991.

(e) After knowing about the order dated 2.4.1996 wherein four juniors were given pay revision, petitioners individually submitted representations on various dates to the respondents and requested to fix petitioners' pay and remove the pay anomaly. However, the first respondent negatived the request and stated that the petitioners have compared the persons working in different Transport Corporations and therefore the request is rejected. Hence these writ petitions are filed with the above prayer.

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3. Counter affidavits have been filed by the respondents wherein the respondents have stated different reason that as per the circular dated 8.12.1995, if there is any pay anomaly, the employee has to apply for removal of the anomaly within one year from the date of anomaly of pay. The petitioners, having applied to remove the pay anomaly after one year, the same were correctly rejected as belated one.

4. The learned counsel appearing for the petitioners submits that the third respondent is working in the very same Corporation wherein the petitioners are absorbed and their request is to refix their pay, at least on par with the third respondent as on 23.11.1991 since the third respondent, admittedly is junior to the petitioners. The learned counsel also submits that as per the settlement under Section 12(3) of the Industrial Disputes Act, 1947, dated 1.9.1989, the first respondent is legally bound to fix the pay of the petitioners at least on par with the pay of their Junior i.e, third respondent, who was promoted on 23.11.1991. On the said date both the petitioners and the third respondent were working in the same Transport Corporation. The learned counsel further stated that the reason stated in the impugned order that the petitioners cannot compare the salary given in the other Corporations will not hold good since all the Transport Corporations are owned and controlled by the State Government and covered by common service rules, common standing orders, and 12(3) settlement is being arrived at once in three years in similar lines.

5. The learned counsels appearing for the respondents submit that in view of the belated request made by the petitioners, their claim was rejected even though the same is not stated in the rejection order.

6. I have considered the submissions made by the learned counsel for the petitioner as well as the respondents.

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7. The point in issue is whether the petitioners are entitled to get their salary refixed/stepped up on par with the salary of the third respondent.

8. The settlement under section 12(3) of the Industrial Disputes Act, arrived at between the Employees Union and the Management clearly states that in the event of Junior employee being fixed at a higher stage of scale than a senior, the pay of the latter shall be fixed at the

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stage allowed to the former. The 12(3) settlement is binding on the management and the respondents cannot escape from implementing the said liability, stating different reasons in different stages. It is relevant to note that the reason given for rejecting the request of the petitioners to rectify the pay anomaly is, the petitioners are serving in different Corporations and the salary given in one Corporation cannot be compared with the salary paid in the other Corporation. The said reasoning is not justified in view of the fact that all the Corporations are owned and controlled by the State Government and the service conditions in one Corporation will not vary from the other Corporation. Section 12(3) settlement entered into by the Workers Union with the Management is common in all the Corporations. Therefore there is no justification on the part of the respondents to deny the claim made by the petitioners to step up their pay to that of their Junior, namely third respondent herein.

9. The reason stated in the counter affidavit is also unsustainable in view of the fact that the circular cannot override the 12(3) settlement apart from the fact that the said reason is not stated in the rejection order. It is well settled in law that the respondents cannot improve their case by stating a different reason in the counter affidavit than the stand taken earlier i.e, prior to filing of counter affidavit.

10. The Honourable Supreme Court in the decision reported in AIR 1978 SC 851 (Mohinder Singh v. Chief Election Commissioner) in paragraph 8 held as follows,

> "The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at p.18):

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"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself." Orders are not like old wine becoming better as they grow older."

11. Taking note of the inconsistent stand taken by the first respondent in these cases and in the counter affidavits and having regard to the 12(3) settlement entered into by the Workers Union and the Management, I hold, the Petitioners are entitled to succeed.

12. In the result, the writ petitions are allowed. The respondents 1 and 2 in the respective writ petitions are directed to refix the salary of the petitioners on par with that of their junior, that is, the third respondent herein and calculate the arrears of pay in terms of the revision and pay the same to the respective petitioners within a period of four weeks from the date of receipt of copy of this order. No costs.

vr

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Managing Director
   Tamil Nadu Government Transport Corporation
   (Villupuram Division-II), Vellore.

2. The Managing Director,
   Tamil Nadu Government Transport Corporation,

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(Villupuram Division-III), Kancheepuram.

3. The Managing Director,
Tamil Nadu State Transport Corporation, Vellore.

4. The Managing Director
Tamil Nadu State Tansport Corporation, Kancheepuram.

+ one cc to Mr. C. Manohar, Advocate sr no. 30503
+ one cc to Mr. V.R. Kamalanathan, Advocate sr no. 30504
+ 2 cc to Mr. T. Chandrasekaran, Advocate sr no. 30346 and 30347
'

nm(04.08.2006)

W.P.No.2464/1998 etc. batch

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